

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

BARTO EDWARD USRY, JR.

V.

CIVIL NO. 3:16-CV-499 HTW
CRIMINAL NO. 3:94-CR-123 HTW-1

UNITED STATES OF AMERICA

ORDER

Before this court is the motion [doc. no. 46] of petitioner-defendant Barto E. Usry, Jr., by counsel, to deem admitted all of the arguments and allegation in his petition under 28 U.S.C. §2255 to vacate, set aside or correct sentence by a person in federal custody.

By its order of February 27, 2017, [doc. no. 46], this court ordered the Government to respond to Petitioner Usry's § 2255 motion by March 15, 2017. The government filed its response six days late, on March 22, 2017 [doc. no. 48]. Meanwhile, petitioner filed a motion on March 21, 2017 asking that the matters alleged in his petition be deemed admitted and that his petition under §2255 be granted, as no responsive pleading had been filed. As noted, the government filed its response in opposition on the following day.

According to the Fifth Circuit Court of Appeals, the government's delay in responding to a court order is not sufficient reason to grant a habeas petition. *Wiggins v. Procnier*, 753 F.2d 1318, 1321 (5th Cir. 1985) (citing *Hyder* at *6); *Broussard v. Lippman*, 643 F.2d 1131, 1134 (5th Cir. 1981). This is especially true where, as here, the government was only seven days late in responding. This court is persuaded that Petitioner's motion to deem admitted [**doc. no. 49**], should be and hereby **is, denied**. A separate ruling will be made on petitioner's §2255 motion.

SO ORDERED AND ADJUDGED, this the 17th day of August, 2017.

s/ HENRY T. WINGATE
UNITED STATES DISTRICT JUDGE